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Current Topics.

The First Digest.

"OF THE making of Digests there is no end." This is perhaps the most famous of all the sayings attributed by tradition to SOLOMON; certainly its only rivals are the melancholy "'Vanity of Vanities,' saith the preacher, 'all is Vanity,'" or the cynical reflection on the ways of a man with a maid. About this utterance on Digests there is a time-honoured legend amongst the conveyancers of Lincoln's Inn which has been handed down throughout all ages without contradiction so that it has acquired some sort of prescriptive right to be regarded as an indisputable and incontrovertible truth. According to this legend SOLOMON uttered this aphorism when shown a digest of his own decisions upon doubtful points under the Law of Moses which some zealous scribe had drawn up at the instance of the insatiably inquisitive QUEEN OF SHEBA. She had journeyed to Jerusalem that she might administer interrogatories to the wisest of monarchs, and had found his replies to her queries so satisfactory that she undertook the obligations of matrimony in order to enjoy a continuance of this instruction. In these modern times a lady eager to acquire a sound knowledge of law would doubtless adopt a less drastic remedy; she would be satisfied with the more modest rôle of a pupil in chambers to some eminent conveyancer. Be this origin of the saying right or wrong, however, it certainly looks as if this legendary digest of SOLOMON'S *Responsa Prudentum* were the first Law Digest known to history. Since then there has been an endless chain of works seeking to preserve remembrance of the decisions of judges. Amongst these, we need hardly say, an honoured place must always be reserved for *Mews' Digest*, the fourth volume of the new edition of which was issued by the publishers this month.

A New Greville's Diary.

LAWYERS WHO are interested in Constitutional History are well aware of the merits as a contribution to Legal History of that very remarkable Mid-Victorian work, "Greville's Memoirs," the author of which spent nearly half his life in the office of Clerk to the Privy Council. FULKE GREVILLE has preserved the secret history of the cabinet cabals, and the political history of his time, and without his guidance in the interpretation of motives and intrigues much of the real meaning of the nineteenth century evolution of Cabinet Government would have been wholly lost to the student of Constitutional Law. GREVILLE, it is true, was a somewhat bitter and partisan Whig who generally "took care not to let the Tory dogs get the best of it," to revert to the familiar maxim on which Dr. JOHNSON acted when he reported in the *Rambler* the "Debates in the Parliament of Lilliput." Everyone knows the story of how, when the DERBY-DISRAELI Ministry was formed in 1852, full of "*novi homines*" in politics, country gentlemen who had never taken official part in any Government before, GREVILLE contemptuously refused to attend the first meeting of the Cabinet, which is technically a Committee of the Privy Council, in his capacity as Clerk, and insolently sent his deputy instead. Some of the ministers proposed that he should be summoned and asked for an explanation, but Lord DERBY replied with regal indifference: "Oh, leave the fellow alone, when I ring for my footman I never notice whether it is John or Thomas who answers the bell." But, apart from a note of prejudice in his comments, GREVILLE in his diary is well known to be a truthful and accurate narrator of events or of gossip, so that his Memoirs have proved, as we said, always of very great historical value. It is interesting, therefore, to find an aspirant to succeed him in Sir ALMERIC FITZROY'S recently published "Memoirs."

Sir Almeric Fitzroy's Memoirs.

THERE IS ONE point which Sir ALMERIC FITZROY shares in common with his famous predecessor, the office of Clerk to the Privy Council, and that is a certain cynicism where eminent lawyers are concerned. It is pretty clear that he does not love lawyers, but we fear that in this respect he only echoes faithfully the prevailing sentiment in Parliament and in the clubs to-day. His stories about lawyers are always interesting, but they have often a bitter taste somewhere. One story he tells about Lord RUSSELL OF KILLOWEN will illustrate his touch and the sting which it carries. Lord RUSSELL, he says, when Lord Chief Justice, hurried across to Monte Carlo at the beginning of one Long Vacation. Inveterate card-player as he was, finding that the only other occupant of his carriage was an American gentleman, he entered into conversation with him, and invited him to play bridge with him. They played the whole journey long, and the Chief Justice, playing with his usual consummate skill, won a considerable sum from this chance companion. On arriving at Monte Carlo the latter hurried off to the police station to warn the police against "a notorious card-sharper," who, he said, had travelled with him from Paris. One can imagine his astonishment when he learned that his opponent had been the Lord Chief Justice of England! This story has the true GREVILLE touch about it; but probably it is a good deal coloured.

An Estimate of Sir John Simon.

BUT SIR ALMERIC'S deepest cynicism seems to be reserved for Sir JOHN SIMON. This is his description of that great lawyer and advocate, who stands almost alone in the front rank of the Bar to-day, and whose unquestioned distinction in law, in politics, and in his great University career, even his most uncompromising political opponents, we fancy, will freely admit. "His conscience," says Sir ALMERIC, "is a parcel of punctilios; he is sensitive and fidgety by temperament; and his mental disposition, ignoring the broad harmonies of conduct, leads him to dwell on superficial contradictions; an intermittent scrupulosity of conscience finds its complement in the timidity of the over-trained lawyer." Of course, there are just a few grains of truth in all this. Sir JOHN SIMON is rather given to making petty points in debate, but that is a weakness almost universal amongst lawyers who have constantly to put the best possible face on a client's very weak cause. He is a man of scrupulous honour and integrity, though, like all successful men of the world, he sees the necessity of closing his eyes to a good deal of the seamier side of business and politics; but the innuendo which lies behind the suggestion that he has "an intermittent scrupulosity of conscience" is quite unfounded. Sir JOHN'S scrupulosity of conscience comes always into vigorous activity whenever any real occasion for taking an ethical stand arises. Timidity is hardly the charge to level against the Cabinet Minister who resigned in 1915, rather than support a military service bill which was opposed to his, no doubt, somewhat doctrinaire but manifestly sincere belief in the voluntary principle. And the Attorney-General who, when the Woolsack was offered to him, earlier in that same year, refused this great prize because he did not care to replace Lord HALDANE, to whom he had owed much kindness in earlier days, is surely a man whose real magnanimity of heart ought not to have been overlooked by Sir ALMERIC FITZROY.

A Sally of Mr. Augustine Birrell, K.C.

SIR ALMERIC, however, is not always severe in his estimate of persons; there are many genial stories in his pages, some of which relate even to the lawyers he evidently loves so little. One witty sally of Mr. AUGUSTINE BIRRELL, K.C., he tells with relish. During the days of the Lloyd George Budget in 1908, when Mr. WINSTON CHURCHILL and Mr. LLOYD GEORGE were working hand in glove together as promoters of an advanced movement inside the Liberal party which the more official members of the Cabinet and of the party never pretended to like, Mr. CHURCHILL was boasting gaily with youthful enthusiasm to a group of his party followers in the lobby of the great thoughts LLOYD GEORGE and he were thinking together for the common weal. His hearers, we gather, although the "Memoirs" do not exactly say so, were rather bored and not particularly sympathetic. All unconscious of this lack of enthusiasm CHURCHILL ran on: 'and every evening GEORGE and I always contrive, whatever happens, to get half-an-hour's tête-a-tête on the Treasury Bench," or some words to that effect. "Really" said Mr. BIRRELL, "I am sure there is no danger of either of you boring his interlocutor in that case." Such is the version of the story we have heard, but Sir ALMERIC tells it in a way which we think is a little less pointed.

A Constitutional Queen.

BUT PERHAPS the most genial as well as the wittiest of all Sir ALMERIC FITZROY'S stories is one he tells about the late Queen VICTORIA and the advice as to her constitutional duties once given her by a Highland minister in Scotland. Here again the story is one on which our own version differs a little in detail from that of Sir ALMERIC, and as we have been familiar with the story from boyhood, we prefer to give it in our own form. Queen VICTORIA, not long after her widowhood, was staying at Balmoral Castle and, contrary to her usual custom, decided one Sunday morning to pay a surprise visit to the kirk of a fine old Scottish minister, a noted preacher, in a parish several miles away. The royal carriage drove up to the kirk; Her Majesty and her companion entered and accepted a seat in one of the principal heritors' pews. The aged minister, taken all unawares as he was, proved fully equal to his reputation and to the occasion. He commenced the service with a *prayer just one hour long* in which he conscientiously recited the whole constitutional history of the House of Hanover and asked for divine guidance to her Majesty on lines indicated by himself upon every important political issue of the day. At last he ended up with this magnificent peroration: "Grant, O Lord, we beseech Thee, that Her Majesty, recently bereaved by Thy Divine will for Thine own good purposes of her beloved Consort, may be given grace to put off the 'Auld Man' of Original Sin and to put on the 'New Man of Righteousness,' and to stand forth like a he-goat upon the mountains, rejoicing in Thy service." The story of this prayer will remind many lawyers of a story often told about the late Judge RENTOUL, who was the most delightful after-dinner speaker of his day, but also a most religious man. Once, when asked at a prayer meeting to lead off in prayer, he began "O Lord, permit us to relate unto Thee an anecdote."

Overhanging Trees.

PRACTITIONERS WHO HAVE not forgotten the celebrated case of *Crowhurst* v. *Amersham Burial Board* (4 Ex. D. 5) will be interested at finding in s. 23 of the New Public Health Act a provision relating to trees, hedges or shrubs which overhang any street or footpath, so as either to obstruct or interfere with the light from any public lamp or to endanger or obstruct the passage of vehicles or foot passengers, or even to obstruct the view of drivers of vehicles. Hitherto, in such cases, the only remedy has been an application to justices complaining of a statutory summary nuisance, and obtaining an order for its abatement by the lopping of the trees. Under the new section a much speedier and more drastic remedy is given to the local authority. It can serve of its own motion, notice on the owner to remove the offending foliage, and in default of his so doing within fourteen days, can itself get the task accomplished and recover summarily the expenses from the owner. This stringent extension of the anti-nuisance summary jurisdiction law to such matters as overhanging branches of trees, can only be regarded as a striking proof of the enormous increase of motorists in number and influence. It cannot be doubted that the principal sufferers from this class of minor obstructions have been the drivers of motor cars. Accidents, however, are sometimes due to this cause, and accidents on highways, in which motor cars are directly or indirectly involved, have been so greatly on the increase that desperate remedies to diminish them have long been popular. But, curiously enough, while the owner of a tree is compelled to prevent his tree from making a public nuisance of itself, no similar restraint has yet been ever contemplated by the Legislature on the indifference of the owner of animals which likewise make themselves a nuisance. Dogs roam through our streets depositing insanitary refuse or fouling meat or green-groceries, yet apparently their owners cannot be rendered liable either civilly or criminally for their mischief and depredations.

Excessive Interest.

IT IS ALWAYS interesting to note the circumstances in which judges will exercise their statutory discretion under the Moneylenders Act, 1900, to re-open a transaction, as between registered moneylender and borrower, where in their opinion the interest is "excessive" or the transaction "harsh and unconscionable." On the last day of the Summer Sittings, Mr. Justice AVORY re-opened a transaction on this ground, in *Glaskie* v. *Parsons*, *ante*, p. 826, where the facts are of some interest. The borrower was a merchant of standing who

under the stress of the present trade slump became financially embarrassed at the end of 1924, owing to considerable sums which he had invested on the Continent being for the moment unrealisable. He was introduced to a moneylender and received from the latter an advance of £800. For this he signed a promissory note of £1,000 and gave as security £1,000 of debentures in a manufacturing company which had never failed to pay a dividend. The note was repayable by instalments in the usual way, in this case twelve monthly instalments of £75 each. After three had been paid, the note was renewed, but after further payments the borrower made a default under the contract and proceedings were eventually taken by the lender on the renewed note. Interest, it was calculated, had been in fact charged and paid at the rate of 100 per cent. per annum. In view of the fact that ample security to cover the loan had been given, notwithstanding the business position and experience of the borrower the learned judge considered that the case was nevertheless one in which he must re-open the transaction. He allowed interest at 40 per cent. on the original loan of £800 and found the balance due on this basis only £173, instead of £925 which the lender had claimed in his writ. Although re-opening the transaction, however, he considered that the lender had done nothing to disentitle him from receiving, and ought to receive, the costs of the action.

Double Income Tax.

En passant we have only just space to refer to the very recent revenue case of *Rolls-Royce Limited* v. *Short* (*Inspector of Taxes*), *Times* 3rd July, which was interpreted in a way which is felt by investors to impose some hardship upon them under the provisions of s. 27 of the Finance Act, 1920, which gives relief from United Kingdom income tax in respect of Dominion income tax. The object of the section, of course, was to remove the burden of double income tax within the Empire, namely the liability of persons in two or more parts of the Empire to pay income tax in respect of their *whole* income in each separate fiscal division of the Empire in which they are technically resident, either for private or for business purposes. Section 27 says: "If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income, proves to the satisfaction of the Special Commissioners that he has paid Dominion income tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income tax paid or payable by him on that part of his income at a rate thereon to be determined as follows: (*a*) If the Dominion rate of tax does not exceed one-half of the appropriate rate of the United Kingdom tax, the rate at which relief is to be given shall be the Dominion rate of tax; (*b*) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of United Kingdom tax." The appellant company was registered in the United Kingdom, and had here its chief seat of business, but it had branches in India and Australia. It was assessed to British income tax for the year in dispute *on the whole of its profits made*, and under sched. E., of course, was assessed on the earnings of the preceding three years. It was assessed to Indian income tax on the profits of its Indian business only, and on the profits of the year of assessment, since in India income tax is not based on the three years' rule. As a matter of fact, the British figures for the period in question, based on the average of the three preceding years, showed no profits for the Indian business, as there had been a net loss for that business in those years. The company claimed, however that in estimating the British income tax for the year of assessment, they should be granted as relief, by *deduction* from the amount payable in England, the Indian income tax paid in the same year. The Court of Appeal, however, took the view that, since the two taxes were assessed on a different basis, no such adjustment was permissible under s-s (*a*) of s. 27.

Rating Liability of Trustee in Bankruptcy.

In the recent case of *Re Lister, ex parte Bradford Overseers* v. *W. Durrance, Trustee in Bankruptcy, Times*, 3rd July, Mr. Justice P. O. Lawrence had to consider a point of extreme interest relating to the liability of a trustee in bankruptcy who has exercised his statutory power of disclaiming an onerous lease to pay rates for the occupation of the property *prior* to the date at which he disclaimed it. In this case the bankrupt occupied at the date of the bankruptcy business premises in Bradford on quarterly tenancy at a rent of £9 16s. a quarter. On 8th February, 1923, the trustee in bankruptcy went into possession of the premises and his name was placed in the rate-book as a ratepayer, but on 1st June, 1923, he found the appropriate of disclaimer of the lease as onerous property under s. 54 of the Bankruptcy Act. A dispute having arisen as to his liability for the rates from 8th February to 1st June, the Deputy County Court Judge of Bradford County Court stated a case under s. 100 (3) of the Bankruptcy Act, 1914, for the opinion of the High Court. Now by s. 54, s-s. (1), of the Bankruptcy Act, 1914, a trustee in bankruptcy is given power at any time within twelve months after his first appointment to disclaim any property of an onerous character. Sub-section (2), so far as material, is as follows: "The disclaimer . . . shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him." By s-s. (8) any person injured by the operation of a disclaimer under the section is to be deemed to be a creditor of the bankrupt to the extent of the injury, and may acordingly prove under the bankruptcy. In these circumstances the questions stated for the opinion of the court were: (1) Whether the respondent was personally liable to pay to the applicants the said rates or any and what part thereof; (2) whether the said rates or any and what part thereof were payable out of the assets in priority to the debts provable in the bankruptcy; (3) whether the notice of disclaimer filed by the respondent on 1st June, 1923, operated to determine (*a*) the personal liability (if any) of the respondent to pay the rates from the date when the premises so disclaimed vested in him, (*b*) the liability of the estate (if any) to payment in priority; (4) whether the applicants have any and what right to rank for dividend *pari passu* with the general body of creditors for the rates.

"Disclaimer of Lease."

Now, it seems reasonably clear that the primary object of s-s. (2) of s. 54 of the Act of 1914 was to relieve the bankrupt and his estate and to relieve the trustee in bankruptcy from all liability as though the property had never vested in him at all. (See Sir George Jessel in *ex parte Walton, in re Levy*, 17 Ch. Div. 746, at p. 751; *Hill* v. *East and West India Dock Company*, 9 App. Cas. 448, at p. 455; *re Finley, ex parte Clothworkers' Company*, 4 T.L.R. 745; 21 Q.B.D. 475). It is clear from the last case that this liability results to the trustee in respect of the property vested in him. It is necessary first to assess the rateable hereditaments and then find who was the occupier. But, however, it was contended against the trustee that s. 54 only discharged the trustee from liability incident to the vesting of the property in the trustee, and not from such a liability as a liability to rates, which did not attach owing to the ownership's vesting in the trustee, but only arose when the trustee went into possession. The sole question is whether the words in s-s. (2) of s. 54 of the Act, "shall discharge the trustee from all personal liability in respect of the property," are sufficient to include a liability for rates, and as the liability to pay rates arose from occupation liability for rates was not included. The view which Mr. Justice Lawrence took was in favour of the trustee, on the ground that, where a trustee for bankruptcy goes into occupation of onerous property and subsequently disclaims the lease, he is discharged, not merely from liability created by his own action, but also from all liability in respect of the premises

vested in him which he disclaims. He said that the sole point was whether the rates in this case were a liability in respect of the property. He thought that they were. The rating authority rated the property occupied by the trustee and that became the rateable hereditaments, and in respect of those rateable hereditaments the personable liability attached. In ordinary parlance it was in respect of the property disclaimed, and the court ought not to restrict the meaning of the words there used. The rates, therefore, were a liability on the trustee in respect of the property disclaimed within the precise meaning of the words in s-s. (2) of s. 54. The result was that the rating authority would not be able to get at the assets of the bankrupt for payment of these rates. Questions 1, 2 and 4 of the special case would therefore be answered in the negative, and question 3 in the affirmative.

The Late Mr. Jack Skinner.

THE PRECINCTS of the Courts a fortnight ago were marked by a tragic incident, namely, the collapse and subsequent death on the same day of Mr. SKINNER, after conducting two cases in court. Breaking down in the course of the second case he presently recovered, and, although suffering much pain and weakness, persisted in remaining and continuing until the end, when he once more collapsed. Such tragic incidents are part of the inevitable risks of a forensic career; the strain of advocacy on nerve and heart, especially in later life, is much more intense than the layman supposes, and often calls for a grim courage invisible to the spectator. Mr. SKINNER, who was in his sixtieth year, had retired shortly before the war from the Indian Civil Service, where he had risen to the high rank of Judicial Commissioner, the equivalent of a High Court Judgeship. Retired civilians who are not content to become mere valetudinarians drinking the waters of continental spas, and who have not any great enthusiasm for an old age devoted to sport or travel, usually seek a second career either in politics, in literature, or at the Bar, and Mr. SKINNER chose the latter. With a modesty very characteristic of his well-balanced mind, he was content to accept the humble rôle of law reporter in the Divorce Court and to note cases, where previously he had tried them; but he soon became known as something more than an ordinary law reporter. He was always ready to assist the court as *amicus curiæ* and to assist counsel by devilling in an emergency. Gradually his good sense and authoritative bearing gained recognition and work of his own came; he seemed on the point of achieving a considerable practice in Divorce when there came the tragic end to his career we have just related. He will be much regretted by those who remember his cheery and genial spirit.

Practical Points for Practitioners.

THE ENACTMENT of New Laws by the Legislature inevitably creates difficulties for the practitioner until he has become accustomed to the changes made by the statutes. It is notorious that the average solicitor everywhere is feeling difficulties in connection with the New Law of Property and that points of doubt are constantly being suggested by experienced conveyancers as they read the Nine Acts which contain the New Law. Some interesting queries of this kind were recently raised in the columns of THE SOLICITORS' JOURNAL by letters from correspondents who expressed a hope that the "Conveyancer's Diary" would deal with their difficulties. It has now been arranged, commencing on the 3rd October, to devote the necessary space each week to discussing practical points of interest under the Acts suggested by readers of the JOURNAL; for details readers are referred to our advertisement columns elsewhere. We also take this opportunity of drawing attention to another practical matter, namely, the requirements of s. 24 of the Administration of Justice Act, 1925, in connection with which new forms of administration bonds are prescribed for use in the Principal and District Registries on and after 1st October, 1925. The necessary forms may now be obtained from The Solicitors' Law Stationery Society, Ltd.

Solicitors in the Colonies.

II. LEGAL PROSPECTS IN CANADA AND AFRICA.

IN LAST week's issue of THE SOLICITORS' JOURNAL we intimated our intention of endeavouring to indicate shortly the prospects before solicitors who leave England to attempt practise in some one or other of the overseas territories of the British Empire. Last week we discussed the situation in Australia, New Zealand and South Africa. This week we propose to consider prospects in Canada and Tropical Africa. The concluding article, next week, will deal with India, the Far East, and the West Indies.

THE GREAT LONE LAND.

LET US TURN from Australia to Canada. This Dominion, curiously enough, has never been so attractive a magnet for English lawyers as Australia. To begin with, Eastern Canada is very largely French-Canadian, and except in Ontario the East has not hitherto been a country where any lawyer could hope to succeed in competition with the French-speaking Canadian Catholic. For a man from England to set up in practice anywhere within the boundaries of Quebec influence would be comparable only to the audacious optimism of a man of Kent or Yorkshire who would deliberately seek his fortunes in Dublin or Belfast. Ontario, it is true, largely industrial and almost wholly English-speaking, and governed by the Common Law, not the French Law, is in another case. But here the Scottish tinge of settlement and sentiment, combined with the incursion of Methodist or Presbyterian Americans from across the Great Lakes, have been influences working against the English professional man all along. To succeed as a professional man in Ontario half a century ago, whether as lawyer or doctor or teacher or journalist or engineer, it was almost essential that a man should be a zealous adherent of the leading local Methodist or else the Presbyterian Church; this condition militated against invasion for the English though not for the Scottish ranks of lawyers.

Matters are rather different farther west. As the prairies were settled and a British Columbia began to push ahead some thirty years ago, English lawyers began to make their way into Victoria, Vancouver, Calgary, Regina and Edmonton. Especially within the province of British Columbia, settled essentially by Englishmen from the old country, very largely English public schoolmen, too, coming from the ranks of the country gentry, the English lawyer was regarded with favour. It was less so in Saskatchewan, Alberta and Manitoba, where the prairie settlers were very largely either Eastern Canadians or Americans from south of the border; but even here some English lawyers made their way.

But we fear that all this is now a matter of the past. Canada, like Australia, possesses nowadays its own universities and trains in its own faculties of law its own aspirants for forensic fame. One cannot advise the young Englishman to seek a practice in Canada. But if he feels an intense attraction towards "Our Lady of the Snows," then perhaps he may try Vancouver or Victoria, the leading cities of British Columbia. In the words of the spectators who shouted encouragement to IVANHOE at the tournament of Ashby-de-la-Zouche, "Touch RALPH DE VIPONT'S shield . . . he has the least sure seat," we tender this advice. But we fear that the Englishman will be very lucky if he makes his way in the legal world even of British Columbia.

THE SUNNY FOUNTAINS OF AFRICA.

THERE ARE, however, two large domains of Africa which do not produce in any number practitioners of European descent born within the confines of their own territory. These are the five colonies which make up West Africa and the five which make up East and Central Africa. In Nigeria, the Gold Coast, Sierra Leone, Gambia and the Mandated Territory of Togoland, which five colonies form together the West African group, there are no white settlers who bring up their children in the land, no universities, and very few educated natives.

Natives who enter professions in these countries necessarily receive their training in England.

Hence there always has been an opening for the Englishman who cares to settle in these sultry and humid lands with their uninviting burden of reeking mangrove clusters. Before the war there were, indeed, very good prospects for the Englishman who could stand the climate. There was plenty of work to be found, for the native trusted only the man of white colour. Living then was cheap. Moreover opportunities for investment in cacao or fruit plantations were easily found; and after a score of years a careful practitioner could almost certainly count on retiring with a comfortable competence. Unfortunately, he seldom lived to do so, for the climate was very unhealthy.

To-day ways and means of fighting tropical diseases have been found, and the country is no longer a death-trap for the European. Indeed, Upper Nigeria, a huge province, is quite as healthy as Rhodesia or India, probably more so. But the cost of living has gone up, and the lawyer needs a considerable sum in hand before he can safely venture on the expense of a start. If a young solicitor wishes to try West Africa, indeed, his best plan is to secure a three years' engagement with one of the firms of lawyers already in practice, many of whom are only too eager to take on a vigorous young man who will start a branch for them in some district not yet worked over by lawyers, and will pay him an adequate salary. He should refuse, however, to accept a clause usually inserted in his contract which forbids him to practise locally *after* the termination of his period of service. With a little firmness, we believe, he can usually get this clause either excised altogether or so cut down as not to seriously hamper his efforts to earn a livelihood.

The New Colony of Kenya.

East Africa, there can be no question, is much more tempting than West Africa to the average practitioner. East and Central Africa consists of a great group of Crown Colonies and Protectorates, based on the Zambesi and flanked by the Indian Ocean on the east. To the west there lies the Belgian Congo and the great chain of African lakes; to the north lies the Soudan deserts. Northern Rhodesia, Nyassaland, Tanganyika, Zanzibar and Kenya make up this group. The first four of these are not very suitable for the legal practitioner: they are undeveloped, unhealthy, tropical. But Kenya is a magnificent country with a splendid future ahead of it. It is situated on the Equator, but for the most part is a tableland nearly 10,000 feet in height, so that it enjoys a delightful temperate climate. The altitude is too high for people who suffer from weak hearts, but otherwise any healthy man will find the climate suits him admirably.

Kenya is a white man's country, and the highlands are being rapidly settled by large numbers of ranchers and planters. Indeed, the English aristocrat or country gentleman with a taste for settlement overseas, who at one time preferred a ranch in British Columbia or a sheep farm in the Antipodes, is now taking up huge estates of a semi-sporting type in Kenya. There is abundance of native labour, and, of course, a large population of Indian traders. Nairobi, the capital, is rapidly becoming a splendid modern English town. It is clear that the colony is opening up: it produces no local lawyers: the field is to the man from overseas. But he must have capital to trade over a period of waiting, for living is *very* expensive in Nairobi. Provided he can find a thousand pounds by way of a start, an efficient young English solicitor has a very good chance in Kenya.

So far we have dealt chiefly with lands in which civilization is new. But the British Empire includes also some lands in which races, who have built up their own civilization, have been settled for centuries. India, China, Malaya, are the types of these. What are the prospects of the English solicitor in these countries? that we must leave over for discussion until next week.

SCRUTATOR.

(To be continued.)

Central Control by District Audit.

I.—The Control of Local Administration.

Recent notorious cases which need not here be mentioned by name have raised problems of law which call out for solution in connexion with the control by central administrative authorities of local expenditure. In the case of Poplar Borough Council, which is the subject of a decision in the House of Lords, *Roberts* v. *Hopwood*, 1925, A.C. 578, the question arose in connexion with poor law relief; but it is obvious that it may arise in other directions as well. Large administrative powers have been entrusted by Statute to local authorities in the belief that these bodies, representing, as they are intended to do, the ratepayers, will show ordinary prudence and common sense in the spending of public money. Normally this expectation has been justified in the past. Unfortunately, it is less likely to be justified in the future, and that for a number of obvious reasons.

To begin with, under the provisions of the Representation of the People Act, 1918, a gigantic extension of the local franchise, as well as of the parliamentary franchise was made. The old theory was that only persons who pay rates directly or indirectly through the payment of rentals which include rates, should take part in electing local authorities which spend public money. This they rested on the simple doctrine that taxation and representation should be, if not in the same hands, at any rate in hands closely identified with one another. But the last Franchise Act boldly extended the local government franchise to the wives of local government electors, although the latter have no personal responsibility for rates, direct or indirect. This extension is absolutely opposed to the principle on which the local franchise has always been based and seems to have been adopted by the House of Commons through a false analogy with the case of the Parliamentary Franchise, which rests on residence, not on assessment to rates. The government of the day realised this distinction and pointed out the objection to this extension; but it was carried against the views of the Cabinet by an open vote of the House of Commons, probably under some confused idea that it meant sex-equality in the local franchise. Of course, it does not mean sex-equality, since no corresponding privilege is conferred on the husbands of women who are ratepayers, and as such are local government electors. That, however, is a minor matter. The point with which we are at present concerned is the moral effect of this departure from the sound principle that only those who are in some sense responsible for bearing the burden of rates should have the control of rate expenditure. It has created a vast electorate who are naturally sympathetic towards demands for liberal treatment of unemployed or destitute persons, who have no business experience, and share the common belief of the poor that the public purse is bottomless, and whose lack of personal responsibility for rates leads them to regard with equanimity a great rise in local expenditure.

The result of this situation is that some revision of the old theories as to the relative independence of local authorities seems to be a matter of not distant urgency. The accepted English theory has hitherto been that local elective authorities should be trusted to manage their own affairs in accordance with their own discretion subject to some very intangible and limited central control. This central control has been, roughly, of three rather different kinds:—

First, Legislative Control.—Parliament has never delegated to local authorities any real legislative power. They can make bye-laws imposing limited money penalties, but those bye-laws are rigidly confined within narrow limits by the statutes which confer power of making them; they are usually subject to disallowance by either the Home Office or the Ministry of Health according to their subject-matter; and they can also be declared *ultra vires* in legal proceedings if they are deemed by the courts to be either (1) unreasonable or (2) uncertain or (3) unequal or (4) opposed to public

policy. As a rule the powers of local authorities are confined within the limits conferred by either—

(I) Public General Statutes, such as the Public Health or Housing or Highway Acts;

(II) Adoptive Acts, such as the Libraries Acts, Baths and Washhouses Acts, etc.;

(III) Private Local Acts conferring special powers on the particular authority.

Second, Executive Control.—Generally speaking, local authorities are subject to the control in certain matters of the Ministry of Health, which formerly was the Local Government Board, and in a less degree some other Government Departments. This control is exercised in various ways:—

(I) The Issue of General Orders. The Central Department issues a General Order which governs the general machinery of administration by the local authority. Examples of this are the General Poor Law Orders and Education Orders, issued by the Ministry of Health and the Board of Education respectively.

(II) The Imposition of *Maximum* or *Minimum* Standards to be observed by local authorities. The *Workhouse Test* used to be the stock example of this, but nowadays that has been modified almost to the extent of disappearance.

(III) Direct Administration in case of default. The Ministry of Health can only step in and administer sanitation, water-supply, poor relief and some other matters of an authority habitually refusing to carry out its statutory duties in an efficient or lawful manner. But this extreme step is a last resort and hardly ever taken.

(IV) Audit of Expenditure. The General Audit by the Ministry of Health's auditor, with his power of surcharge, is an important adjunct to the general ministerial powers of curbing loose control.

Third, Judicial Control.—The authority of the High Court can be invoked to restrain illegal action of a local authority in proper cases by means of the Crown Prerogative Writs of *Mandamus, Certiorari, Prohibition*, and the like. This, perhaps, is the form of Central Control most frequently put into actual practice.

Of all the various powers of central control set out above, there is only one which seems to be of much real use, and that is the audit of a ministerial auditor appointed by the Ministry of Health. Every local authority, and certainly every poor law authority, regards with some trepidation the approach of the General Audit, when every item of expenditure may be the subject of comment and request for an explanation. It is true that disallowance of illegal expenditure is very rare. It is also true that surcharge of disallowed expenditure on the persons responsible for it is even rarer. Even when there has been a surcharge, the Ministry of Health nearly always remits it on a promise of future good behaviour. They have even statutory power to sanction in advance otherwise unlawful expenditure, and this power is occasionally exercised. But notwithstanding the extraordinary leniency of the Central Department in the exercise of its powers, and its extreme reluctance to interfere with local authorities, the moral effect of the Audit is an important asset on the side of prudent local administration.

The history of the Ministerial Audit is somewhat complex, but, in substance, it may be said that the system is based on the local audit by the District Auditor, which takes place once every year. The District Audit was in its origin an audit of the expenses of Boards of Guardians inaugurated by the old Poor Law Board, afterwards replaced by the Local Government Board, which is now the Ministry of Health. But the system was soon extended to other rates, and now is nearly, if not quite, all-embracing in its scope, so far as local administration of public funds is concerned.

The District Auditor is an official appointed by the Ministry of Health, usually a member of the Bar or a Chartered Accountant who has abandoned a private professional career for an appointment under the Department. It is not usual to promote to this office First Division Civil Servants who enter by competitive examination: the appointments usually go to men with previous experience of affairs not derived from the files of a ministerial bureau, and there can be no doubt of the good sense, tact, efficiency, and integrity which distinguish this important class of public official.

II.—The Facts in *Roberts* v. *Hopwood*.

Since the moral effect of the General Audit is considerable, therefore, it is highly important that, when that exercise which is so rarely made of the powers conferred by law on the auditor has for once come before the courts for adjudication, the authority of the auditor should be affirmed in clear terms by the Judiciary. This is by no means always the case. For the courts share the reluctance of the executive to interfere with local authorities, and they have fettered their one form of interference practically confining it to the case of expenditure which is either (1) illegal, *i.e.* for a purpose opposed to public policy, or (2) *ultra vires*, or (3) *mala fide, i.e.* undertaken for some corrupt or improper purpose. A local authority which is honest though foolish and fanatical may do very dangerous things without committing a breach of any of these regulating principles; it has a very wide discretion, indeed; so long as it exercises that discretion *bona fide* it is almost impossible to check its activities.

It is therefore interesting to notice that in *Roberts* v. *Hopwood*, *supra*, the Court of Appeal did not see its way to support an auditor's disallowance and surcharge, whereas the House of Lords, although not without some visible hesitation and reluctance, found it possible to do so. The conflicting views of those two high tribunals make the real difficulty of the legal issues raised. We will therefore indicate briefly the facts of the case and the grounds on which the House of Lords rested its support of the auditor's action.

Section 62 of the Metropolis Management Act, 1855, provides that a metropolitan borough council [being the successor of the Board of Works to which that Act refers] "shall . . . employ . . . such . . . servants as may be necessary . . . and may allow to such . . . servants . . . such . . . wages as (the council) may think fit." Under s. 247 (7) of the Public Health Act, 1875, as applied to the accounts of Metropolitan Borough Councils, the district auditor "shall disallow any item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment." These are the statutory enactments which are relevent to the points which arise.

Now in the year ending 21st March, 1922, Poplar Borough Council, as also it had done in the previous year, paid its *lowest grade* of workers, *whether men or women*, a minimum wage of £4 per week. It continued to do this notwithstanding that the cost of living had fallen during that year from 176 per cent. to only 82 per cent. above the pre-war level. The Borough Council so acted because they were of opinion that £4 was the least wage which a local authority ought, as a model employer, to pay for adult labour. The district auditor considered that such a rate indicated not wages but gratuities to the employees; he considered that it was based on a wrong principle of a kind which the council were not entitled to adopt; for he held the view that the object of the council was not the payment of such a wage as was necessary under market conditions to secure efficient and willing service but the inculcation of an economic theory as to the natural rights of employees. He, therefore considered for himself the proper rate of wage. He arrived at this by adopting as a basis the pre-war rate of wage, adding on a bonus proportioned to the increased cost of living adding on yet again an allowance of £1 by way of margin for possible inadequacy of the pre-war rate, and then assuming that the total rate

thus aggregated was the maximum rate which ought to be paid. This fell short of £4, and he surcharged the persons responsible for voting the excess with the difference between £4 and the amount he considered reasonable. The question was explained by reference to rates of pay fixed by Industrial Wage Boards; but those do not affect the principle and need not be considered here.

Well, the local authority refused to promise alteration of its practices and took steps to question by *certiorari* in the Divisional Court the validity of the auditor's disallowance and surcharge. The Divisional Court upheld the auditor, but the majority of the Court of Appeal (Lord Justices SCRUTTON and ATKIN, Lord Justice BANKES dissenting) reversed the decision on the ground that the local authority had admittedly acted *bona fide* and therefore could not be held to have trespassed beyond the very wide limits of the discretion conferred upon them. This decision the House of Lords in its turn reversed. It did so on the grounds (1) that the discretion conferred by the statute must be exercised *reasonably* as well as *bona fide*, (2) that the fixing by the council of an arbitrary sum for wages, based on general social principles and not on the economic conditions of the labour market, was not an exercise of their discretion, but action outside the limits of the duties entrusted to them, (3) that expenditure upon a lawful object may be so excessive as to thereby become unlawful, and (4) that it was the duty of the auditor to disallow any such excessive expenditure and surcharge it on the persons responsible.

III.—THE PRINCIPLE IN *Roberts* v. *Hopwood*.

It is not to be denied that *Roberts* v. *Hopwood, supra*, goes a long way in the direction of interfering with the local control of official offences by local authorities. There is singularly little authority on the subject-matter of the case. There is an Irish decision, that of Chief Baron PALLES in *Rex* v. *Newell*, 1903, 2 Ir., 335, which in somewhat similar circumstances, affirmed the right, and, indeed, the duty of an auditor to enquire into the reasonableness of payments made by local authorities for lawful objects and to disallow such part of those payments as seemed to him so excessive as to be unlawful. The duty of an auditor to check *all* items of administration, although he cannot question the *policy* of lawful expenditure, has been asserted in two English cases, *Rex* v. *Roberts*, 1908, 1 K.B. 407, per Lord Justice FARWELL at p. 435, and *Thomas* v. *Devonport Corporation*, 1900, 1 K.B. 16, per Lord Chief Justice RUSSELL OF KILLOWEN, at p. 4. But the principle affirmed in those cases does not seem to go very far.

Roberts v. *Hopwood, supra*, carries the principle a stage further. It recognizes as residing in the auditor a duty, not merely to check the apparent legality and propriety of wages, but also to enquire into the motives of the local authority in making the precise exercise of their discretion they have made. It recognized his right and duty to consider whether those motives are grounded on purely business considerations of a normal kind, or are an attempt to introduce a principle not authorized by Parliament into the remuneration of employees. This is not far from a claim on the part of auditors to exercise some sort of control over policy.

The *fundamentum decidendi* of the present case ought not to be overlooked. The auditor did *not* disallow the money because he considered that an excessive wage for unskilled workers. He disallowed this amount, or rather, its excess over a sum he found by other calculations, because the evidence of the council's resolutions and minutes showed him that they had determined to disregard economic considerations altogether and pay the minimum wage they considered proper, quite irrespective of conditions in the labour market. Had the conduct of the council been different; had they professed to base their decision on questions of cost of living and efficiency of labour, it seemed doubtful whether the excess of their figure over one arrived at by the auditor, who adopts his own method of calculation, would have been deemed a good ground for disallowance. There may be *bona fide* differences of opinion as to amounts. PONTIFEX.

Mistaken Identity: The Beck Case.

III.—THE FIRST CONVICTION OF ADOLF BECK.

WE have seen how ADOLF BECK, after residing at Covent Garden Hotel for ten years after his return from South America, had differences with his landlord and removed to Buckingham Gate, at the end of 1894. Although he had considerable property it seems to have been locked up for the time being in investments which were, at least temporarily, unprofitable; and during the twelvemonth which followed his departure from the hotel, he was in very low water financially. He constantly borrowed money from business friends and dressed very shabbily. He was no longer a young man, being fifty-four years of age. Such was his position when complaints began to reach the ears of the police that women were being defrauded by a middle-aged stranger whose description they gave, and who bore a certain resemblance, to ADOLF BECK. In fact, so many as eleven women were thus victimized, and in due course were called as witnesses in the prosecution which eventually followed.

THE WITNESSES AGAINST BECK.

Let us give briefly the stories told by one or two of those women. First, let us take FANNY NUTT, the widow of a deceased corporal-major in the Life Guards. On 2nd December, 1894, Mrs. NUTT was walking in Bond-street about 6 o'clock in the evening when a well-dressed stranger accosted her and offered to call and see her at her abode somewhere near Hampstead-road. Next day arrived a note on the stationery of the Grand Hotel, headed "Monday evening," and signed with an illegible scrawl, making an appointment. In due course the stranger called, was shown upstairs, and conversed with Mrs. NUTT; he proposed to her that she should let him establish her as his mistress in St. John's Wood; incidentally he told her that he had estates in Lincolnshire (which happened to be a county where JOHN SMITH or WYATT spent part of his childhood). Next he produced his cheques, one for ten and one for fifteen guineas, drawn on what purported to be the "Union Bank, Belgrave Mansion," a branch which had no existence. These cheques were on bill-forms, having the printed words "after date" and "value received"; this was one of the peculiarities which had marked the frauds for which "JOHN SMITH" was tried and convicted in 1877, and at once, on the police learning of it, drew their suspicions to "JOHN SMITH." A list of dresses to be purchased was made out, and the stranger took away the lady's rings, which she valued at about £6 or £7, for the professed purpose of getting them matched with others of greater value which he promised to get for her and send by a commissionaire attached to the Grand Hotel. The stranger then left; a brooch was missed after he had gone. He was well dressed and gave no name. Mrs. NUTT did not present the cheques, nor did she inform the police, but on 9th January, 1896, when BECK had been arrested on other charges, she attended the police-court, there "recognized" him in the dock as the man who had tricked her a twelvemonth before, and came forward as a witness against him.

Next in order of time came the case of a Miss DUNCAN, who, on 1st January, 1895, about a month after the FANNY NUTT episode, was walking in Piccadilly one Saturday afternoon. A stranger addressed her and made an appointment to visit her next day. On Sunday a telegram arrived purporting to come from the stranger to Miss DUNCAN's lodgings in Pimlico, and in the afternoon he arrived. Here again the stranger discussed an establishment in St. John's Wood, gave a worthless cheque, in this case for £25, drew up a list of dresses to be procured for the lady, borrowed rings on a similar pretext, and also borrowed his cab fare. This cheque was drawn likewise on a non-existent bank-branch. The stranger, who, of course, disappeared with the rings and did not return them, was beautifully dressed and spoke with a foreign accent, which Miss DUNCAN supposed to be German. She, too, did

not come forward to identify BECK as the man until his arrest on another charge a year later, as in the FANNY NUTT case. "WILTON" was the name used by the man.

The next case in order of time is that of EVELYN MILLER, a fictitious name assumed for the purpose of the prosecution, its owner being an actress temporarily out of employment. On 3rd January, 1895, she was walking in Bond-street about five in the afternoon when a stranger stopped her and suggested they had met before at a Covent Garden Ball. The usual arrangement to call followed, and so did the worthless cheque, the list of dresses, and the ring trick, while the stranger also borrowed a sum of £2. In this case, again, the name given was "WILTON." This witness presented the cheque, but on finding it worthless went at once to Albany-street Police Station, and described the man who had defrauded her. Her description was on these lines: "Slight foreign accent, about sixty, 5 feet 4 inches high, hair and moustache cut short, almost white, dressed well, speaks with rather a broad accent, evidently a gentleman." In due course EVELYN MILLER identified BECK at the police court on 23rd January, 1896, again just a twelvemonth later.

The next case was that of ALICE SINCLAIR, who, on 18th April, 1895, was walking in Ludgate Hill, when a stranger spoke to her. He arranged to call next day, and the same sort of incidents followed, namely the proposed establishment in St. John's Wood, the worthless cheque, the list of dresses, the borrowed rings. The man described himself as the "Earl of Wilton," but ALICE SINCLAIR did not think he could be an Englishman. He, too, was well dressed in new clothes. This point of the clothes is not unimportant since at the time of these offences BECK was very badly off, and according to all his acquaintances dressed extremely shabbily.

It is not necessary to repeat in detail the mode in which similar tricks were played in the other cases, for there is a wearisome similarity and monotony of concomitant incidents in all the cases; little differs except the locale of the first meeting, the name of the bank on which the worthless cheque is given and the name used by the stranger in each case. In several cases he called himself "Lord Willoughby." The other incidents concerned the following ladies:—

Mrs. TOWNSEND, a widow. Locale, Piccadilly. Date, 6th March, 1895.

JULIETTA KLUTH, music-hall artiste. Locale, Olympia. Date, April, 1895.

MINNIE LEWIS. Locale, Pimlico. Date, 3rd April, 1895.

KATE BRAKEFIELD, music-hall artiste. Locale, Sloane-street. Date, 22nd July, 1895.

DAISY GRANT. Locale, St. James'-street. Date, 4th July, 1895.

[It should be noted that a companion who was with DAISY GRANT at the time did not identify BECK as the man at the police court.]

OTTILIE MEISSONIER, teacher of music. Locale, Victoria-street. Date, 26th November, 1895.

[In this case there was no suggestion of an establishment in St. John's Wood, and the criminal called to enquire about some chrysanthemums at a flower show, stealing a watch while in the house. The lady at once gave information to Vine-street police station, with a description of the man.]

Mrs. CAWSTON, Warwick-street. Locale, Buckingham Palace-road. Date, September, 1894.

[This lady did not identify BECK as the culprit, although VANVERT, Beck's secretary, thought the handwriting in this case looked very like BECK's, although he was not quite certain about it.]

Miss SINCLAIR, Warwick-street. Date, August, 1894.

[This is not the ALICE SINCLAIR previously mentioned. This second Miss SINCLAIR was living with Mrs. CAWSTON. She, too, did not identify BECK, although VANVERT, his secretary, most positively identified as in BECK's handwriting a letter she received in connexion with the incidents in her case.]

Mrs. LESTER, Miss ELLIOT, Miss JULIA ALEXANDER, Mrs. GARDINER, these are four other ladies who were the victims of precisely similar frauds about this time, but who did not identify BECK as the culprit.

THE ARREST OF ADOLF BECK.

We now come to the arrest of ADOLF BECK and the accusation against him. We have seen that on 26th November, 1895, OTTILIE MEISSONIER, the music teacher, was the victim of one of those frauds, somewhat different in character from the others, since in her case there was no suggestion of an establishment in St. John's Wood. In December, 1895, three weeks after her complaint to the police, OTTILIE MEISSONIER was walking along Victoria-street when she saw a man standing at the door of a house. She spoke to him and he replied in English. This man was BECK, and the house was that in which he was then living. Instead of withdrawing to his flat, he walked away from the lady and she followed him. He went very rapidly and presently came up to a policeman on duty. He at once addressed the policeman complaining that the woman had accosted and was following him. She thereupon charged him with being the man who had stolen her property three weeks before. The constable took both parties to Rochester Row police station, where the officer in charge accepted the woman's charge but refused to take BECK's charge.

The same evening HARVEY and DAISY GRANT attended the station and identified him as the man who had defrauded them. He was paraded with seven other men, but it was not until he took off his hat that one of the women picked him out as the culprit. Publicity was now given to the case by the police, whereupon many other women came forward with charges. Some of these women identified him, others did not. In fact, eleven women in all, out of seventeen victims of those frauds, picked out BECK as the culprit. It should be remembered that in many of those cases the offence had occurred about a twelvemonth ago and the victims had only seen BECK on two occasions. It ought to be stated here that, a decade later, when the Commission of Inquiry took place, BECK positively "accused the police of spiriting away" one of the witnesses, Mrs. GARDINER, whose evidence was inconsistent with that of the women MILLER, TOWNSEND and SINCLAIR, and therefore tended to exculpate BECK. No very intelligible explanation has ever been given of the failure by the police to find and produce this woman when BECK demanded her to be produced at his trial in 1896. The police alleged that they had tried to find her through a solicitor who was acting on her behalf but who refused to disclose her address unless a warrant out against her for uttering worthless cheques was withdrawn. Comment on this explanation would serve no useful purpose.

Not only did the eleven women referred to come forward and identify BECK as the culprit immediately after his arrest, but an even greater misfortune befell him. His secretary, VANVERT, when shown the various letters, envelopes, cheques, etc., exhibited in the case as those given to the women, identified the handwriting as very like that of his sometime employer. Meanwhile, the police had received a letter from an outsider reminding them that in 1877 very similar crimes had been committed by the man SMITH, arrested and sentenced in that year. SMITH, who had been in prison again in connexion with a worthless cheque, had been liberated in April, 1894, and his movements could not be traced. But the officers concerned with the case of 1877 were sent for and were perfectly confident that BECK was the man of 1877.

Thereupon the police sent the letters and documents to a handwriting expert, Mr. GURRIN, who asserted that, in his opinion, the documents were in BECK's handwriting, although, he said, the handwriting was disguised. But he did much more than this: *he also stated that there could be no doubt in the world that the documents were in the handwriting of the* SMITH *convicted in* 1877. This evidence, of course, is now part

of the case which shows BECK to have been innocent, since in 1877 he was in South America beyond any question whatever. But in 1896, naturally enough, the police considered that this circumstance proved BECK to be the same person as SMITH.

Of course, it followed that BECK was committed for trial. When he arrived at the Old Bailey a count was added to the indictment, alleging that he had been previously convicted of felony in the name of Smith in 1877. As we will see presently, this count was not proceeded with. The trial came on before Sir FORREST FULTON, the Common Serjeant, who in 1877 had prosecuted SMITH. Since the papers had been full of the story of the similarity between the two cases, there can be no doubt whatever that Sir FORREST FULTON must have had this in mind when he tried BECK in 1896. It only remains to add that as a judge the late Sir FORREST FULTON had a particular horror of crimes against women of the unprotected classes, and that the case was one in which however much he no doubt attempted to take a perfectly unbiassed view, his very marked point of view must have rendered it difficult for him to appreciate all that might be urged by way of suggesting doubts in a case where the evidence seems overwhelming. Mr. AVORY, now the High Court Judge, appeared for the prosecution, and Mr. GILL, K.C., defended BECK.

THE EVENTS OF THE TRIAL.

If the reader will recall to his mind the matters just narrated, it will be transparently obvious to him that the case against BECK seemed overwhelmingly strong. In the first place, eleven witnesses positively identified him as the man who had committed precisely similar offences against them. In the second place his handwriting was identified as that, disguised of course, which appeared in the documents which were part of the material exhibits in the case. This identification was partly that of a handwriting expert, but it was also partly that of BECK'S own secretary, VANVERT. Again, his conduct when recognized by OTTILIE MEISSONIER in Victoria street, as narrated by her, no doubt in good faith though she probably had unconsciously coloured it, was certainly most highly suspicious. Lastly, BECK was undoubtedly in a financially embarrassed position at the time, and certainly needed money. Also, although this could not be a part of the legal evidence against him, he was a man of "gallantry" where women were concerned, a fact which the police naturally discovered when they made inquiries about him, although he had never before been suspected or accused of frauds on women.

It is undeniable that a case of this kind is about as strong a *primâ facie* case as could be brought against anyone. Only a very perfect *alibi* on at least one of the occasions on which offences were committed, we imagine, would have induced a jury to acquit BECK. But BECK could not produce an *alibi* on *any* of the occasions, and in view of the large number of different dates, this certainly seemed suspicious; it must be remembered, however, that BECK was a very lonely man, and had few friends to testify to his movements, moreover he had no regular work or habits so that it must have been all but impossible for him to recall his whereabouts on occasions happening many months before. All things considered, however, in the absence of proof of an *alibi*, we are quite convinced that any jury would have convicted BECK in 1896, and would convict to-day a person charged with a similar offence in similar circumstances. The case illustrates the extreme danger of relying on circumstantial evidence, but our courts scout this danger in practice and incline to regard circumstantial evidence as the best evidence.

Against all this evidence, however, BECK had one strong card in his favour if it were only admissible as evidence. The crimes were precisely identical with those committed by SMITH in 1877, and the handwriting in the exhibits was *absolutely identical* with that of SMITH in 1877. The presumption is that SMITH committed the later offences as well, a presumption which is strengthened by the fact that in 1904, when again caught *in delicto* committing similar offences he pleaded guilty and never suggested that he was innocent of the crimes of 1894-5. As a matter of fact, the handwriting of the exhibits, which is printed in *facsimile* with handwriting undoubtedly that of BECK and handwriting undoubtedly that of SMITH in 1877 by Mr. WATSON in "Notable British Trials; Adolf Beck," bears a resemblance so striking to that of SMITH in 1877 that there can be no doubt at all about their identity. It bears no resemblance that the ordinary man can see to the handwriting of ADOLF BECK: indeed, the expert, Mr. GURRIN, who suggested in 1896 that it was BECK'S handwriting disguised, had to admit in the box that the disguise was very complete indeed. Later on, of course, Mr. GURRIN withdrew his identification of this handwriting as that of BECK and admitted in the most handsome and ample way that he had made a regrettable mistake in this identification.

The obvious defence in BECK'S case, then, was that the crimes of 1895 were committed by the same man who committed those of 1877, and that this man could not be BECK because BECK was then in South America. And an attempt to put forward this defence was in fact made in cross-examination by the defence, but it was ruled out as irrelevant by the trial judge. Later on, when a Commission of Inquiry, presided over by the Master of the Rolls (Lord Justice COLLINS), reported on the BECK case in 1904, that learned judge suggested, rather rhetorically, that BECK had been convicted after a trial in which all evidence in his favour had been ruled out. This description has often been repeated. But we must frankly say that it strikes us as bordering perilously on mere empty rhetoric. It is not easy to see how the evidence which the defence proposed to adduce could have been *legally* relevant. The law is compelled to reject a great deal which in ordinary human affairs is regarded as very valuable evidence, for example, it rejects "hearsay evidence," it rejects evidence that the prosecutor is a man of bad character, unless that fact is in issue, and it rejects evidence refuting a denial by witness that they have been previously convicted. The law rejects this kind of evidence because their relevance is only very secondary, and trials would become too complicated for the extrication of the true issues of evidence if such secondary issues were admitted.

Now it is scarcely possible to contend that BECK could *not* have been guilty of the offences of 1896, merely because somebody else who could not possibly have been BECK, committed similar offences in 1877, and because that person had a handwriting which was identical with that of the exhibits in 1895. After all, it is humanly possible, that at a distance of nearly twenty years two different persons might have committed similar offences and might have possessed similar handwriting. This, indeed, would appear to have been the view of Mr. AVORY, who prosecuted, if one may judge from his evidence before the Inquiry of 1904. Were it not for the subsequent arrest and plea of SMITH in 1904, the exculpation of BECK would not be completed by merely showing that he was not the man believed to be guilty of the offences of 1877. We have therefore very much doubt whether in law the exclusion of the proposed evidence as to the conviction of SMITH in 1877 for similar offences and of BECK'S absence in South America at that date can possibly be attacked as an erroneous decision on the law of evidence.

While, however, the attempt to adduce this evidence as to the crimes of 1877 was frustrated by the court, it did have one effect. It may have convinced the prosecution that BECK was *not* SMITH, for after the conviction on the substantive charge Mr. AVORY did *not* proceed with the subsequent count alleging the previous conviction. He, himself, when subsequently examined in 1904, could not recall after the lapse of

ten years the reasons for the exercise he made of his discretion in 1895, but there can be little doubt that his only reason could have been a feeling that the count would probably fail in view of the offer of the defence to prove that BECK was in South America in 1877. If he thought so, of course, he was justified in dropping a count he could not prove, although the defence afterwards suggested rather unreasonably that he had prejudiced BECK by not putting it forward. This seems a strange charge since BECK was already convicted of the substantive offence. The belief that BECK was SMITH, no doubt, influenced the Common Serjeant in passing sentence, but this was not Mr. AVORY'S fault, since he did not suggest anything of the kind.

At this point we must leave the story of this inte.esting case, to be completed in our next article.

FRANK PLEDGE.

(To be continued.)

Readings of the Statutes.

The Nine Acts and the New Law.

X. THE ADMINISTRATION OF ESTATES ACT, 1925.

We have now discussed the principles governing the two most important of the seven consolidating statutes, namely the Law of Property Act, 1925 and the Settled Land Act, 1925. Next in importance to these comes the Administration of Estates Act, 1925, and this we must now briefly consider. The importance of this Act, however, in connection with the new law, rests rather in its amendments of the general law of property than in its effect on the New Conveyancing, although this last is by no means an insignificant part of its general effect.

Before proceeding to discuss the Administration of Estates Act, however, we must interpolate here a note on the general scheme of the Settled Land Act, 1925, which considerations of space eliminated from the article on "Settlements" last week. Suffice it to say, that the Act is a consolidating Act, which incorporates the earlier Settled Land Act and ancillary statutes. It consists of Nine Parts, divided into 120 sections, and of five schedules. Part I contains such preliminary matter as the definition of a Settlement (a complex matter), of Settled Land, and provides the machinery for creating, constituting and dealing with Settlements. Part II sets out the powers of a tenant for life. Parts III, IV, V and VI deal with the investment of capital moneys, improvements, position of trustees, and other matters familiar to Settled Land Act practitioners. Part VII contains some clauses for the protection of purchasers. Parts VIII and IX are procedural or supplemental. Of the schedules, the first is very important indeed, for it contains the statutory forms of the instruments to be used in creating or otherwise dealing in Settlements.

The field covered by the Administration of Estates Act, in fact, is a threefold field. When a man dies, three separate problems relating to the winding up of his interests in property have necessarily to be solved by the lawgiver. In the first place, the legal estate or interest in his property, real or personal, has to vest in somebody or other who will be capable of selling it or otherwise disposing of it so as to give a good title to third parties; otherwise a dead man's property would be a *damnosa hæreditas* which no cautious person would touch for fear of rival claimants to the title. In the second place, his obligations to creditors secured and unsecured, have to be met out of his assets. And in the third place, whatever of his estate is not disposed of in meeting his obligations must be distributed amongst the beneficiaries entitled to it, either under his will, or if he die either wholly or partially intestate, then in accordance with the destination of property provided for by the Statutes of Distributions. The first of these problems concerns what is known as the Devolution of the Deceased's Estate, *i.e.*, the formal transfer of the bare legal interest, as distinct from the beneficial interest in his estate, to a representative who so far as possible, stands in the shoes of the deceased. The second problem concerns the Administration of Assets, and the chief problem it raises is that of the marshalling of assets where the deceased dies solvent, but leaves debts as well as a surplus over the funds necessary to meet those debts. The third problem is the Distribution of the Beneficial Interest in the estate amongst the persons entitled.

Now the method by which any modern and enlightened system of jurisprudence solves these three problems is a comparatively simple one. It collects all the assets into the hands of some person or persons whom it regards as the Representative of the deceased in respect of his debts and assets, *i.e.*, what Roman law called his *universal successor*; but only as regards succession to the legal estate in his property. It then imposes on this person a trust to use those assets for the discharge of the obligations of the deceased in their proper order. Finally it imposes on the representative a further duty, that of distributing the residuary estate which remains after payment of debts amongst the persons entitled by law or by the will of the deceased. One hand or set of hands discharges all these tasks under the more or less nominal supervision of the court. In this way simplicity and certainty is easily attained.

HISTORY OF ENGLISH DEVOLUTION.

But it is only very gradually that English Law has felt its way, step by step, towards the simple and logical system of devolution at death found in enlightened systems of jurisprudence. In fact, the finishing touches of this simplification has only been put on by the new Administration of Estates Act, 1925. In the earliest age of the Common Law, a man's real property went to his heir-at-law, and could not be disposed of at all by will. His personal property had a variety of destinations; but in substance his chattels became the property of the church which administered them. It was only by a gradual series of stages that this old system came to an end. By a series of statutory changes the deceased obtained power to make a will of his real property; but unless he did so it went to his heir in accordance with either the law of primogenity, or with some special custom, such as Gavelkind or Borough English. Gradually, too, he acquired power to appoint an executor of his personal property.

By the Statute of Executors, passed in the reign of Edward III an important change was made in the legal position. Under this Act, upon the death of a man, his property no longer became the property of the church which administered the affairs of the deceased, but became the property either of the dead man's executor, named by him in a will, or else of an administrator appointed by the Ecclesiastical Courts of Probate. The executor or administrator, however, were not allowed to keep the property for themselves, if the deceased had given directions in his will. The executor or administrator must first bury the deceased, and discharge his funeral, as well as his testamentary expenses; he must then discharge his debts; finally he must pay any legacies given by the deceased; lastly he must hold the property for the next-of-kin recognized by the statute. If no next-of-kin existed, however, the property became his own, beneficially, as well as in respect of the bare legal estate. In other words, a distinction was drawn between the devolution of the legal estate and the distribution of the beneficial interest, and the important duty of the administrator of the assets by the person receiving the legal estate was recognized. Thus a rudimentary system came into existence so far as personal property was concerned, which complied with the requirements, specified above as those of any enlightened system of jurisprudence.

But the Statute of Executors left in existence several large gaps and anomalies. In the first place, the real property and the personal property of the deceased did not descend beneficially into the same hands. The heir took the real property, and the devisee of the deceased left a will devising all or part of his lands to a particular person other than the heir; but the personal property went to a very different class of persons to the next-of-kin. These, once a very uncertain series of groups, were finally settled by the Statute of Distribution in the reign of Charles II, which remained unaltered, except in one or two details, right down to 1922, when the Law of Property Act of that year swept away the old system altogether.

In the second place, the debts of the deceased fell originally on his personal property to the complete exoneration of his real property, and had to be paid not by the heir or devisee, but by the executor or administrator who reimbursed himself out of the personal estate. Gradually this was changed. Testators got into the habit of devising their real property for the payment of their debts, or of charging it with payment of their debts, or of devising it to their executors on trust for sale, or of otherwise disposing of it in such a way as to render it liable to debts. And a series of statutes, the familiar Locke King Acts, passed in the Early and Mid-Victorian Era, rendered land which had been mortgaged or charged with a debt in the deceased's lifetime liable to meet that debt in priority to the personal assets of the deceased. The result of this and of other complications, which need not here be considered, was that a complicated system of "marshalling assets" arose when a man died leaving debts of any considerable amount.; the executor or administrator had to "marshall" his assets in a certain order of priority, taking certain assets in priority to others for the payment of the debts of the deceased. Also differences, now abolished, grew up as regards both priority of assets and priority of creditors, according as (1) the deceased died solvent or insolvent, (2) his estate was administered in the Chancery, the Probate, or the King's Bench (Bankruptcy) Divisions, or (3) his estate was administered in Court or out of Court. The Judicature Acts abolished many of the anomalies thus created but they were not finally got rid of until the Administration of Estates Act, 1925, put an end to them.

In the third place, there were great complications erected by the fact that on a man's death the formal legal estate, no less than the beneficial interest, in his property went into different hands according as it was realty or personalty. The realty went to the heir or devisee; the personalty went to the personal representative, *i.e.*, the executor or administrator who was responsible to the Court of Probate. The latter Court did not even administer a will which related to realty only. The confusion which resulted led to partial change by the Land Transfer Acts, which caused the real property as well as the personal property of the deceased to devolve in the personal representative, for administration and discharge of debts; but, unfortunately, those Acts allowed the land to vest in the devisee upon the assent of the personal representative to the vesting; this assent could be given verbally and could even be implied; the result was that in practice there was great difficulty in proving either that an assent had been given or that it had not been given. The burden and obstacle thus created in declaration of title, of course, is very obvious. It is clear that this survival of the old dual system had to go if a really scientific system of devolution was to be constituted by statute, and accordingly the dualism has now been abolished by the New Law.

The Leading Changes in the Law.

It will be seen then that the New Law of Property had three problems to solve here in order to secure the simplicity, uniformity and removal of inequalities or anomalies which was one of its objects. The first of these objects was to set up one uniform system of *Devolution* of all property, real or personal, testate or partly intestate or wholly intestate. The second was to provide a simple set of rules for the administrative marshalling of assets. The third was to assimilate realty and personalty as regards the law of succession. The third task was, perhaps, the most difficult. It was not feasible to adopt under the new system either the laws of succession pertaining to realty or those pertaining to personalty, because both were archaic. A new set of rules different from either had to be devised *De Novo*. The rules of distribution actually adopted, however, were not abstract or doctrinaire rules evolved out of his own inner conscience by the draftsman or taken from some text-book on ethics or theoretical jurisprudence. On the contrary, the draftsman essayed his task in the most practical and empirical of ways. A large number of well-drafted wills filed at Somerset House were examined and the normal provisions were culled from these; it was found that in fact most wills of well-to-do middle-class persons followed much the same lines; these were assumed to fairly represent the public opinion of the present-day as regards the beneficial succession to property on an intestacy, and were adopted in a systematised and generalized form as the basis of the New Rules of Distribution. Again, distinctions of sex and age had to be got rid of, and this was done.

The New Law of Devolution.

The leading principle of the New Law of Devolution of Estates can be briefly summarized as follows, if we eliminate unnecessary details, and adopt a model suggested by an article in the *Conveyancer*, 22nd inst.:—

First: All property, real and personal, testate or intestate, devolves at death on the personal representative of the deceased. Copyhold and customary tenures, of course, have been abolished.

Second: The property which so passes includes:—

(*a*) Property beneficially enjoyed by the deceased at his death.

(*b*) Property over which he has a general power of appointment at his death.

(*c*) Entailed Interests which under the new Law he is disposer of by will.

It does not include—

(*d*) Property of which he was a joint tenant; or

(*e*) Entailed Interests of which he does not dispose by will.

Third—Legal Estates in land, as distinct from equitable interests, devolve under the first rule on the personal representative, but he can vest it in the person beneficially entitled to it, whether under a will or under an intestacy.

This vesting must take place by a written consent signed by the personal representative.

A statement in writing signed by him saying that he has not assented is proof of that fact as in favour of a purchaser for money or money's worth.

Fourthly—The personal representatives cannot exceed four; at least not more than four will receive a grant of letters of administration.

In normal cases one personal representative is sufficient, but there must be two if one of the beneficiaries is either an infant or a tenant-for-life.

The Official Trustee, however, or a Trust Corporation, can act as sole personal representative even in those latter cases.

Fifthly—The personal representatives held all estates, legal and equitable, prior to the vesting of legal estates as described above, on trust for sale on behalf of creditors and beneficiaries.

Sixthly—The personal representative, in the case of settled property, or property in which successive interest exists, or property beneficially falling to a class of persons, or property enjoyed by a tenant for life, or person under age,

upon certain statutory trusts for management, maintenance, accumulation, advancement, and the like which are set out in the Act.

The New Rules of Distribution.

We must now indicate briefly the New Rules which give the distribution of the beneficial interests in the case either of an intestacy or of a partial intestacy. These can be shortly summarized as follows :—

First—Where the intestate leaves a husband or wife :—
The surviving spouse takes :—

I.—The " Personal Chattels " absolutely.

These are defined in s. 55 (x) of the Act as comprising : " Carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery,, articles of domestic or personal use or ornament, musical and similar instruments and apparatus, wines, liquors, and consumable stores."

But they do *not* comprise : " Money, securities for money, chattels used for business purposes."

II.—A First Charge of £1,000, free from death duties and costs, with interest at 5 per centum from death of the deceased until payment of the *corpus*.

III.—(*a*) Where there are no issue, a life interest in all the rest of the estate ;

(*b*) Where there are issue, a life interest in half the estate, the issue taking the other half.

Second—Where the Intestate leaves issue but no husband or wife :—

Here the property is held on " Statutory Trusts " for the issue, as follows :—

I.—All children surviving the testator take equal shares on attaining twenty-one or marriage before attaining that age.

II.—The children and other descendants of a dead parent, who is one of the issue, take his share *per stirpes* equally amongst themselves.

III.—During minority of a child, grandchild, or other descendant thus entitled, the " statutory trusts " of management, maintenance, and advancement apply to his or her share.

Third—Where the Intestate leaves both parents but no issue :—

Father and mother take in equal shares, subject always, of course, to the right of a surviving spouse (if any) already stated above.

Fourth—Where the Intestate leaves one parent but no issue :—

The surviving parent takes the whole property, subject always to the rights of a surviving spouse, if any.

Fifth—Where the Intestate leaves neither issue nor parents :—

Then, subject always to the share of a surviving spouse (if any), the property goes to the following classes, each in succession on failure of members of a preceding class :—

I.—Brother and Sister of Deceased, Whole Blood.
II.—Brother and Sister of Deceased, Half Blood.
III.—Grandparents.
IV.—Uncles and Aunts of Whole Blood.
V.—Uncles and Aunts of Half Blood.
VI.—Surviving Spouse absolutely.
VII.—Crown or Duke of Lancaster or Duke of Cornwall.

The Marshalling of Assets.

We have not space to set out the detailed changes which have been made in the Administration of Assets of the Personal Representative ; but it is desirable to indicate the order in which, under the New Law, the assets left by a deceased person, who dies solvent but owing debts, will be applied to payment of those debts. The order is contained in s. 34 (3) and Part II of the First Schedule of the Administration of Assets Act, 1925, and is briefly as follows —

First—Property of the deceased undisposed of by will, whether real or personal estate, but subject to retention of a fund sufficient to meet pecuniary legacies.

Second—Property not specifically devised or bequeathed but included in a residuary gift : this is likewise subject to retention of a fund sufficient to meet pecuniary legacies of the first fund so retained, as described above, is not adequate for that purpose.

Third—Property of the deceased specifically appropriated for the payment of debts.

Fourth—Property charged with or left subject to a charge for the payment of debts.

Fifth—The fund retained to meet pecuniary legacies.

Sixth—Property specifically devised or bequeathed. This is taken rateably in proportion to its value.

Seventh—Property appointed by will under a General Power of Appointment, or under the statutory power to dispose of entailed interests. This also is taken rateably in proportion to its value.

Eighth—Land remains subject to its statutory liability to assess the death duties charged on it, and, of course, lands charged as security for debts in the deceased's lifetime, remain subject to such debts under the principle of the Locke King Acts, which are repealed and incorporated in the Administration of Estates Act, 1925.

Ninth—The deceased can by will alter the order of application of his assets.

The General Scheme of the Act.

We must now conclude by summarizing only very briefly the general scheme of the Administration of Estates Act, 1925. It is divided into Five Parts and Two Schedules. There are just Fifty-nine Sections.

Part I, which consists of ss. 1, 2, and 3, relates to the Devolution of Real Estate. The principles governing this Part have been indicated above.

Part II, which consists of ss. 4 to 31, inclusive, is concerned with Probate and Letters of Administration. The general procedure is outlined in ss. 4 to 21. Special provisions as to Settled Land and the position of the " Special Representative " appear in ss. 22, 23, and 24. The Duties, Rights, and Obligations of Personal Representatives will be found in ss. 25 to 31.

Part III relates to Administration of Estates, and contains ss. 32 to 44. This is an important Part of the Act and should be carefully studied. It contains the whole machinery of administration, including as one detail only the rules as to Marshalling of Assets outlined above, the actual rules of which appear in Schedule II.

Part IV, which consists of ss. 45 to 52, contains the Rules as to the Distribution of the beneficial interest in residue not disposed of by will ; these have been summarized above. This Part may be regarded as the " Statute of Distribution " as from 1st January, 1926, subject to some limited exceptions in the case of certain classes of lunatics.

Part V, which consists of ss. 53 to 59, contains a few supplemental provisions, indicating the effect of the Act on Death Duties, the position of the Crown, and in a number of other respects.

The First Schedule, which is of obvious importance, sets out the Priorities in the payment of Debts in an *insolvent* estate.

The Second Schedule contains the correlative provisions fixing the order of the application of Assets in the case of a *solvent* estate.

With these few concluding remarks we must take leave of this important Statute and of the Nine Acts, at any rate for the present volume of The Solicitors' Journal.

Rubric.

(*Concluded.*)

Landlord and Tenant Notebook.

Superior and Inferior Tenements.

The recent Irish decision of *Carroll* v. *Routledge*, C.A., 1925, N.I. 31, is a very useful case to the landlord and tenant practitioner, because it covers a point on which no decisive English authority appears to exist. Here a house was let in flats, the plaintiff being tenant of the ground floor and the defendant landlord of the whole house. The first floor was occupied by another tenant and contained a cistern which overflowed. The overflow leaped down into the ground floor flat and caused damage to the occupier's goods. This the tenant of the ground floor discovered, and he thereupon informed the landlord of the whole house, who employed a plumber to execute the necessary repairs. There was no express liability under the tenancy agreements fixing the liability for repairs on the part of any person material to the present situation. The plaintiff took proceedings against the landlord for damages, and succeeded before the first instance judge, but the Court of Appeal reversed him and entered judgment in favour of the landlord. The latter, they held, in the absence of a contract to do repairs, is only liable for damage done when either he is in actual control of the premises where the cause of the damage arises or where he has let those premises in a state of structural nuisance or danger. Neither of these conditions were present here, and the mere fact that the landlord had in fact voluntarily done the repairs required could not impose upon him an *ex post facto* obligation to do repairs he had not contracted to do.

Part Performance of an Oral Lease.

Mr. Justice RUSSELL decided in *Rawlinson* v. *Ames*, 1925, 1 Ch. 96, an important question as to the nature of the part performance which excludes the operation of the Statute of Frauds in the case of an oral contract for a lease. A lady had entered into an oral arrangement with the owner of a flat to take a lease of that flat. It was agreed that certain alterations should be made to the flat, and during the progress of these alterations the tenant frequently visited the premises where she made suggestions for further improvements which were carried out at her request. In the event she repudiated the contract, and on an action for specific performance relied on the Statute of Frauds, as interpreted in the somewhat similar case of *Dickinson* v. *Barrow*, 1925, 1 Ch. 96. Mr. Justice RUSSELL, however, took the view that the acts done by the landlord at the lady's request in her character of tenant were acts of part performance which took the case outside the necessity of compliance with the ceremonial requisities of the Statute of Frauds. The landlord, therefore, was entitled to a decree of specific performance.

Consent Order for Possession.

A useful point from the practice standpoint arose in *Rossiter* v. *Langley*, 1925, 1 K.B. 741. Here, in the course of proceedings by the landlord for recovery of possession under s. 5 (2) of the Rent Restriction Act, 1920, the county court judge made an order for possession by consent of the parties upon certain terms agreed between them. Thereafter on a change of circumstances an application was made to him to vary the order, and the question arose whether he had power to do so. Of course, if he makes such an order *in invitum* after satisfying himself that the conditions precedent under the statute have been satisfied, clearly he possesses under his statutory jurisdiction power to vary the order. But apparently an order for consent might be made even although the conditions precedent to the existence of jurisdiction to make an order under the statute are absent, so that in the case of a consent order it is not self-evident that the judge has power to vary it. The court, however, held that he has power to do so.

CHATTEL REAL.

A Conveyancer's Diary.

Agricultural Holdings: Jurisdiction of Arbitrator.

A question of great interest as to the interpretation of s. 16 (1) of the Agricultural Holdings Act, 1923, came up for decision by the Divisional Court in *Rex* v. *Powell, ex parte Marquis Camden*, 1925, 1 K.B. 641, in which case the court applied and carried somewhat further the principle enunciated last year in *Simpson* v. *Batey*, 1924, 2 K.B. 666. It will be recollected by conveyancers that the section in question specifies the various kinds of questions, differences or claims to be determined by arbitration under the Act, whether as between landlord and tenant or incoming and outgoing tenant or otherwise, and contains this limitation: that the question to be arbitrated shall be one "arising out of the termination of the tenancy of the holding." These words, the Divisional Court has now determined, apply to a "question, difference or claim" which is of the same kind as those already comprised within the cases mentioned in the sub-section and not to questions of a wholly novel kind. Therefore arbitration is not available under the statute in the case of a question *which arises before the termination of the tenancy*, for no such question can be *ejusdem generis* with the kinds mentioned therein.

Ultra vires Arbitration.

The facts in *Rex* v. *Powell*, *supra*, are not without interest by way of illustration of the general principle indicated in the preceding paragraph. Here the owner of an agricultural holding gave to the farmer notice to quit on a certain day. Had this notice been acted on unquestionably, s. 23 (1), *supra*, would have applied and an arbitration under the powers conferred by the statute would have been in order. But a dispute arose between the parties as to whether or not the notice to quit ever came into operation. The landlord alleged that before the date named in the notice it was withdrawn by mutual consent. The tenant denied that he ever consented to a withdrawal of the notice to quit; but he continued in occupation of the holding after the date fixed by the notice for its termination. Finally, the tenant applied to the Minister of Agriculture and Fisheries to settle the dispute by virtue of his statutory powers, and the Minister purported to do so by appointing an arbitrator, who was charged with the duty of determining, in accordance with the provisions of the Agricultural Holdings Act, 1923, three alleged differences between the parties, namely: first, whether the tenancy had been determined by the notice to quit; secondly, whether the tenant was entitled to compensation for disturbance, and, if so, the *quantum* of compensation; and thirdly, the *quantum* of compensation due to the tenant in respect of alleged improvements made by him. Now, none of those questions arises *directly* out of the termination of the tenancy. The first is really a question as to whether the tenancy has terminated at all, and the other two questions only arise as incidents of the decision of the first question.

The Appropriate Remedy: Writ of Prohibition.

Another interesting point, however, arose incidentally in connection with the case. Assuming the Ministry of Agriculture and Fisheries to have acted *ultra vires* in appointing an arbitrator, what is the landlord's remedy? Ought he to sue (1) the tenant for a declaration that the appointment is *ultra vires* as between the landlord and the tenant; or (2) the Ministry for a similar declaratory order and an injunction; or (3) the arbitrator for a declaratory order and an injunction? Or should he proceed against the arbitrator by way of the Crown Prerogative Writ of Prohibition, to prohibit him from acting on jurisdiction not possessed by him? The latter course was adopted, and was held to be proper; the Divisional Court granted the order of prohibition against the arbitrator directing him not to proceed with the arbitration.

MORTMAIN.

The Solicitors' Bookshelf.

Mews' Digest. Second Edition. Edited by Sir ALEXANDER WOOD RENTON, K.C.M.G., late Chief Justice of Ceylon, and SYDNEY WILLIAMS, Barrister-at-Law. Vol. IV. Sweet and Maxwell; Stevens & Sons: Solicitors' Law Stationery Society, Ltd. 35s. net.

The fourth volume of Mews' Digest is concerned solely with the immensely important subject of Company Law. This it discusses under no fewer than twenty-five main headings, so that indeed the volume forms a comprehensive digest of the whole of our Company Law in the form of headnotes covering all the reported decisions which have any conceivable value. No one practitioner can claim omniscience in all this vast field; therefore the present reviewer turned his attention at once to a small portion of the whole field of which he believes himself to have some special knowledge, namely, the doctrine of *ultra vires* in relation to Contracts. This is discussed in two places: namely, in Part I, sub-division 3, sub-section E, where the doctrine of *ultra vires* arises in connection with the Memorandum of Association, and also in Part IV, sub-division (1), which deals specifically with contracts by companies. Here we found all the cases we looked for and some others with which we were not previously conversant; we did not notice any omissions. On the general principle two leading cases are quoted, namely, *Shrewsbury and Birmingham Rly. Co.* v. *London and North Western Rly. Co.*, 6 H.L. Cas. 113, and *Scottish N.E. Rly. Co.* v. *Stewart*, 3 Macqueen's H. of L. 382; these are the cases we should ourselves have selected. In conclusion, it is only necessary to say that in elegance of printing and accuracy of press correction this volume adds two great practical merits to its undoubted value as a scholarly record of carefully noted cases.

THE LAW SOCIETY'S SCHOOL OF LAW.

The Autumn Term will commence on 30th September. The Principal and Vice-Principal will be in their room at the Society's Hall, on Wednesday, 30th September, and Thursday, 1st October, for the purpose of advising students as to their work. Students who desire to enrol under the Exemption Order must communicate with the Principal not later than 2nd October. Copies of the Prospectus and Time-table may be obtained on application to the Society's office. The subjects dealt with during the Term will be, for Final Students: (I) Conveyancing and Probate (Mr. Danckwerts); (II) Company Law and Bankruptcy (The Principal and Mr. Tillard); (III) Sale of Goods and Bills of Sale (Mr. Chorley). Those for Intermediate Students will be (I) Public Law (The Vice-Principal); (II) Crimes and Criminal and Civil Procedure (Mr. Landon); (III) General Course (The Vice-Principal and Mr. Tillard); (IV) Outline of Accounts and Book-keeping (Professor Dicksee). There will be special courses in the Law of Torts and Private International Law for Honours candidates, and in Constitutional Law for candidates reading for the Intermediate Examination in Laws of the University of London. Mr. Danckwerts will hold a special course of eight classes on the new Property Statutes for the benefit of Students who desire further assistance in that subject before sitting for their Final Examination; and Mr. Formoy will conduct a correspondence course in that connection.

Copies of the Regulations governing the three Studentships offered by the Council for award in July next, may be obtained on application to the Society's office.

UNIVERSITY OF LONDON.

OPENING OF NEW SESSION.

On Tuesday, 6th October, 11.30 a.m. to 1 p.m., day students of the Faculty of Laws will be received by the Senior Tutor, the Dean of the Faculty and the sub-Dean. Evening students will be received on Monday, 5th October, at 6 p.m.

A Public Introductory Lecture on "Law and the Faculty of Arts" will be given by Professor J. E. G. de Montmorency on Wednesday, 7th October, at 5.15 p.m. The lecture is open to the public without fee or ticket.

Miscellanea.

THE SHEPPARD CASE.

NEW POLICE ORDERS.

As a sequel to the inquiry into the case of Major Sheppard and the report presented by Mr. J. F. P. Rawlinson, K.C., M.P., to the Home Secretary, three new police orders have now been drawn up and issued to all police stations in the Metropolitan Area. The orders are to be prominently displayed in all charge rooms. They are as follows:—

FINGER PRINTS.—Police are authorised to take the finger prints of certain classes of prisoners at the police stations where charged. This, however, will not be done if the accused person objects; such objection should be made to the inspector or sergeant on duty at the station.

IDENTIFICATION PARADES.—An accused person in police custody whom it is proposed to put up with other persons for identification is to be informed:—

(1) That he or she will be placed among a number of persons, as far as possible of similar age, height, general appearance and class of life as himself or herself, and no intimation as to the identity of the accused will be given to the witnesses.

(2) That he or she has a right to stand in any position in the ranks and to object to any of the persons selected or the arrangements made; any such objection should be made to the officer conducting the identification.

(3) That he or she is entitled to, and may if desired, have a solicitor or any friend present at the identification, but it must be distinctly understood that such person may not in any way interfere by action or words with the proceedings.

BAIL.—The officer in charge of a police station is empowered to admit to bail persons in custody, without a warrant, charged with certain offences.

When an accused person in police custody for any such offence desires to arrange for bail or to communicate with friends, he or she should so inform the inspector or sergeant on duty at the station, who will take immediate steps to comply with the request as far as it is practicable to do so. If the persons with whom it is desired to communicate are on the public telephone, police will, unless the accused has any objection, inquire by that means; otherwise the police telephone will be used. If, however, he or she expresses a desire that communication be made by any other means, such as messenger, or postal telegram, or cab, and will pay the expenses, police will take the necessary steps, if practicable, to give effect to the request.

ENFRANCHISEMENT OF COPYHOLD LANDS, &c.

Lords and Stewards of Manors and other persons who will be affected by the statutory enfranchisement of copyhold lands on the 1st January next by reason of the Law of Property Act, 1922, which comes into force on that date, will be interested to learn of the recent publication by the Ministry of Agriculture and Fisheries of Rules dealing with the compulsory extinguishment of manorial incidents after that date. (Manorial Incidents (Extinguishment) Rules, 1925. Copies obtainable from His Majesty's Stationery Office).

It will be remembered that the extinguishment of such manorial incidents as are saved by this Act can be carried out either by (1) agreement between the lord of the manor and copyhold tenant, or (2) by the service of a notice requiring the ascertainment of the compensation for the extinguishment. In the event of no action being taken under (1) or (2) above, the remaining manorial incidents will become extinguished in the ordinary course at the end of ten years from the 1st January, 1926. In the meantime, and until the extinguishment of such manorial incidents, it will be necessary for all legal instruments for the transfer of enfranchised land or of any interest in such land to be produced to the Steward of the Manor for endorsement within six months of the date of the instrument. The form and manner of certificate to be so endorsed is prescribed in the Ministry's Enfranchised Land (Certificate of Endorsement) Regulations, 1925. Other publications of the Ministry in connection with the changes in the law of real property which will come into effect on the 1st January next are the Redemption of Rents Rules, 1925, and the Renewable Leaseholds Regulations, 1925.

INCORPORATED ACCOUNTANTS.

The next examination of candidates for admission into the Society of Incorporated Accountants and Auditors will be held on 9th, 10th, 11th and 12th November, 1925.

Women are eligible under the Society's regulations to qualify as Incorporated Accountants upon the same terms and conditions as are applicable to men.

Full information may be obtained from Mr. A. A. Garrett, Secretary of the Society of Incorporated Accountants and Auditors, 50 Gresham-street, London, E.C.2.

EVE AS CONVEYANCER.

Few professions have escaped the invasion of women, and quite recently I met probably the first woman conveyancer. Miss Kathleen Britter (her mother has been housekeeper at The Hill, Lord Leverhulme's Hampstead home, for the past six years) had an hereditary interest in land, for her father was a well-known land agent.

She had studied hard and had done secretarial work in a legal office. Then, seeing an advertisement asking for a junior conveyancer, she replied to it.

And now she draws up leases, mortgages, and transfers, and talks glibly about hereditaments, messuages, and mesne profits, and by way of light reading this autumn is to study the new monumental Law of Property.—*Daily Graphic.*

TREATMENT OF CONVICTS.

A Home Office publication has been issued explaining how the rules applicable to male persons undergoing preventive detention are to be modified so that money payments and additional literary and social privileges may be obtained by good conduct.

It is stated that prisoners who have obtained three certificates of industry shall be eligible for garden allotments which they may cultivate at such times as may be prescribed; so far as practicable, the produce of the prisoners' allotments shall be purchased from them at current rates for use in prisons. A store is to be kept in the prison from which prisoners, except those in the penal grade, may make purchases to such extent as the directors may approve, which will be charged against certificate money, work money, or garden-produce money. A prisoner who misconducts himself, or is known to be exercising a bad influence on others, may be placed in the penal grade, when he will forfeit all certificates of industry. The rules provide for mission services, lectures, and addresses on religious, moral, and secular subjects.

THE WIDOWS' PENSIONS ACT.

Sir Kingsley Wood, M.P., Parliamentary Secretary to the Ministry of Health, speaking on Thursday in last week, at a Conservative fête at Malvern, said the Widows' Pensions Act scheme gave protection to some 15,000,000 contributors, who, with their dependents represented some 30,000,000, or over 70 per cent. of the entire population. On the 5th January next the first payments would begin to be made, and they concerned some 200,000 widowed mothers and 350,000 children. An official leaflet explaining the whole matter could that day be obtained from any post office. Application forms for widows' pensions could also be obtained there. The pensions and the orphans' allowances would be payable each week in advance at a post office selected by the applicant.

CHARGES AGAINST MONEYLENDERS.

The Albemarle Reversionary Trust Company, Limited, Savile-row, W., and Ansteys, Limited, of the same address, were summoned at Marlborough-street Police Court on the 10th inst., for sending a circular in the course of their business to an R.A.F. officer who was a minor. Ansteys, Limited, and Philip Lannon, a director of both companies, were convicted and fined £40, and an order to pay £5 costs was made against the company. The other summons was withdrawn. Notice of appeal was given.

Obituary.

[Information intended for insertion in the current issue should reach us not later than Thursday morning.]

Mr. W. W. RICKEARD.

Mr. William Wills Rickeard, solicitor, one of the oldest lawyers in the West of England, died suddenly at his residence, 10, Queen's Gate, Plymouth, on Saturday, the 5th inst. Mr. Rickeard, who had been in indifferent health for the past year, was a member of a well-known Cornish family. After practising for some years as a solicitor at Exeter, he went to Plymouth, where he remained in practice up to the time of his decease. He was one of the proprietors of the Plymouth Proprietary Library, and was for ten years a Churchwarden of St. Mathias Church. He was admitted in 1880, and leaves a widow, three daughters and one son him surviving, one son having died in infancy, whilst another lost his life in the great war.

Mr. E. A. H. HARRIES.

Mr. E. A. Hewitt Harries, solicitor, of the firm of Messrs. Riccard & Son, of South and North Molton (Devon), met his death under tragic circumstances on the 16th inst., his motor cycle coming into collision with a motor car near South Molton Station on the evening of Wednesday. He received serious injuries to the head, and died soon afterwards. Mr. Harries was forty-six years of age and had resided at Barnstaple and North Molton for some years. He was admitted in 1904, and was Clerk to the Commissioners of Taxes and Steward of the Manors of Poltimore, North Molton and Bishopsnympton.

Mr. E. HILL MOTUM.

The death has taken place at Scarborough, after a brief illness, of Mr. E. Hill Motum, solicitor, who held the position of Town Clerk of Newcastle-on-Tyne for twenty-seven years until he retired in 1907. A native of Suffolk, he was within a week of his eighty-fifth birthday. He was, in the year 1873, appointed Clerk to the Newcastle Magistrates, previous to which he carried on practice as a solicitor at Brigg (Lincs). He so impressed all who came in contact with him that when he became a candidate for the town clerkship, vacant on the death of Mr. Ralph Philipson, he received almost the unanimous vote of the council and was appointed to that position on 18th February, 1880. Mr. Motum had a unique experience of Parliamentary work, and during his term of office successfully piloted through many Acts and Provisional Orders. He was a prominent member for some years of the Law Committee of the Association of Municipal Corporations. In 1900 he was elected President of the Newcastle-on-Tyne Law Society, and in the following year a member of The Law Society. He was Prothonotary and Registrar of the City Courts of Record and was also Agent for the Crown Prosecutor. Quite apart from his official duties, he always took a personal interest in all that concerned the well-being of the city, its industries and its inhabitants generally. He was a Freemason and very well known in Masonic circles. He leaves three daughters and one son, Captain Hill Motum, who is a solicitor under the Newcastle-on-Tyne Corporation.

Legal News.

Information Required.

DUCHESS OF ROXBURGHE DECEASED.—Will any person knowing the whereabouts of the Settlement dated 10th June, 1874, made on the marriage of the late Duke and Duchess of Roxburghe, then respectively The Right Hon. James Henry Robert, Marquis of Bowmont and Cessford and Lady Anne Emily Spencer Churchill, kindly communicate with Messrs. Withers & Co., 4, Arundel Street, Strand, W.C.2.

Professional Information.

Messrs. MICHAEL ABRAHAMS, SONS & Co., solicitors, who have carried on practice for many years at 6, Austin Friars, E.C.2, are in consequence of the expiry of the lease removing to more commodious offices at 110, Bishopsgate, E.C.2, which will be the address of the London office on and after Friday the 25th inst. Their telephone numbers and exchange and their Paris address will remain unchanged.

SHENLEY HILL, HERTFORDSHIRE.

The auction announced in this paper for the 6th October will not take place, Messrs. Hampton & Sons having disposed of the property privately.

Appointments.

Mr. A. D. Stocks, O.B.E., has been appointed Legal Adviser and Solicitor to the Ministry of Agriculture and Fisheries to succeed Sir Francis Jones, K.B.E., C.B., retired. Mr. C. Wood-Hill has been appointed Assistant Legal Adviser to succeed Mr. Stocks.

Mr. IYOTIS RANJAN DAS, barrister-at-law, has been appointed one of the judges of the High Court of Judicature at Rangoon in the vacancy caused by the retirement of Mr. Charles Philip Radford Young.

Mr. KENNETH W. MADIN, solicitor, Manchester, has been appointed Deputy Town Clerk of Loughborough. Mr. Madin was admitted in 1923.

Mr. WILLIAM HEWITSON, solicitor, Town Clerk of Appleby, has resigned that appointment after forty years' service. Mr. Hewitson who was admitted in 1882, also holds the appointments of Clerk to the Justices, County Coroner, and Clerk to the East Ward Guardians and Assessment Committee Joint Cemetery Board and Joint Hospital Committee. He has been invited to accept the office of Mayor for the coming year, but declined the honour.

Wills and Bequests.

Alderman Edward Alexander Heelis, of Bongate Cross, Appleby, Westmorland, one of the best-known solicitors in the North of England, and three times Mayor of Appleby, who died on 24th July, left property of the gross value of £28,383.

Mr. William John Bruty, of Westley Wimbush, of Saffron Waldron, and of Broad-street Avenue, E.C., solicitor, who died on 29th July, aged ninety-two, left estate of the gross value of £58,220, with net personalty £56,850. The testator left: £3,000 to his son, William Glynes Bruty, in the fullest confidence, but without creating any trust in the matter, that he will dispose thereof in accordance with his known wishes; and he directed that his remains should be cremated and the ashes placed in his tomb in Chelmsford Cemetery.

Mr. William Edward Yerward-James (fifty-eight), of Caemorgan, St. Mary's, Cardigan, solicitor, left estate of the gross value of £14,793.

Mr. Frederic George Gibson, J.P. (ninety-one), of Waen, Dolgelly, Merionethshire, and of Tynewydd, Sittingbourne, Kent, solicitor, left estate of the gross value of £36,850.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement. Thursday, 8th October, 1925.

	Middle Price. 23rd Sept.	Interest Yield.			Yield with Redemption.		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 2½%	55⅜	4	10	0	—		
War Loan 5% 1929-47	102	4	18	0	4	17	6
War Loan 4½% 1925-45	96⅛	4	13	0	4	18	0
War Loan 4% (Tax free) 1929-42	99½	4	0	0	4	0	0
War Loan 3½% 1st March 1928	97⅜	3	12	0	4	18	0
Funding 4% Loan 1960-90	89⅜	4	9	6	4	12	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93	4	6	0	4	8	6
Conversion 4½% Loan 1940-44	96[11/16]	4	13	0	4	16	6
Conversion 3½% Loan 1961	76½	4	12	0	—		
Local Loan 3% Stock 1921 or after	64¼	4	12	6	—		
Bank Stock	252	4	15	0	—		
India 4½% 1950-55	90¾	4	19	0	5	3	6
India 3½%	67⅞	5	3	0	—		
India 3%	57⅞	5	4	0	—		
Sudan 4½% 1939-73	95½	4	14	6	4	17	6
Sudan 4% 1974	89	4	10	0	4	16	6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years)	80¾	3	14	0	4	10	0
Colonial Securities.							
Canada 3% 1938	83	3	13	0	4	16	0
Cape of Good Hope 4% 1916-36	91xd	4	8	0	5	0	6
Cape of Good Hope 3½% 1929-49	80	4	8	0	5	0	0
Commonwealth of Australia 4½% 1940-60	98⅜	4	16	6	4	18	0
Jamaica 4½% 1941-71	92½xd	4	17	0	4	17	0
Natal 4% 1937	91	4	8	0	5	0	0
New South Wales 4½% 1935-45	93½	4	16	6	5	1	6
New South Wales 4% 1942-62	83⅞	4	15	6	5	0	0
New Zealand 4½% 1944	95½	4	14	6	4	19	0
New Zealand 4% 1929	97⅜	4	2	0	5	1	0
Queensland 3½% 1945	78	4	10	0	5	7	0
South Africa 4% 1943-63	87½	4	12	0	4	16	0
S. Australia 3½% 1926-36	86	4	1	6	5	6	0
Tasmania 3½% 1920-40	83½	4	3	6	5	1	6
Victoria 4% 1940-60	83½	4	15	6	4	19	0
W. Australia 4½% 1935-65	93¼	4	16	6	4	18	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	64½	4	13	6	—		
Bristol 3½% 1925-65	75¾	4	13	0	5	0	0
Cardiff 3½% 1935	88	3	19	6	5	0	6
Croydon 3% 1940-60	67	4	9	6	5	1	0
Glasgow 2½% 1925-40	77	3	5	0	4	11	6
Hull 3½% 1925-55	77	4	11	0	4	19	0
Liverpool 3½% on or after 1942 at option of Corpn.	75	4	13	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53¾	4	13	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63½	4	14	6	—		
Manchester 3% on or after 1941	64½	4	13	6			
Metropolitan Water Board 3% 'A' 1963-2003	62¾	4	15	6	4	16	0
Metropolitan Water Board 3% 'B' 1934-2003	64½	4	13	0	4	13	6
Middlesex C.C. 3½% 1927-47	81	4	6	6	4	19	6
Newcastle 3½% irredeemable	74½	4	14	0	—		
Nottingham 3% irredeemable	63⅜	4	14	6	—		
Plymouth 3% 1920-60	68¼xd	4	8	0	4	19	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	80½	4	19	6	—		
Gt. Western Rly. 5% Rent Charge	99	5	1	0	—		
Gt. Western Rly. 5% Preference	92½	5	8	0	—		
L. North Eastern Rly. 4% Debenture	78½	5	2	0	—		
L. North Eastern Rly. 4% Guaranteed	75½	5	6	0	—		
L. North Eastern Rly. 4% 1st Preference	69½	5	15	0	—		
L. Mid. & Scot. Rly. 4% Debenture	80½	4	19	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	77¼	5	3	0	—		
L. Mid. & Scot. Rly. 4% Preference	70½	5	13	6	—		
Southern Railway 4% Debenture	80	5	0	0	—		
Southern Railway 5% Guaranteed	98	5	2	0	—		
Southern Railway 5% Preference	90	5	11	0	—		